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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,713	10/02/2003	Daniel M. Martelli	1200212R	9171
35227 7590 04/05/2007 POLYONE CORPORATION 33587 WALKER ROAD AVON LAKE, OH 44012			EXAMINER CHEVALIER, ALICIA ANN	
			ART UNIT	PAPER NUMBER
			1772	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/05/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/677,713

**Applicant(s)**

MARTELLI, DANIEL M.

**Examiner**

Alicia Chevalier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007 and 11 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10 and 13-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10 and 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>7-12-06</u>                              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                           |

### **RESPONSE TO AMENDMENT**

The Notice of Non-Compliant amendment mailed June 28, 2006 is hereby withdrawn and a new action follows. See interview summary of July 12, 2006.

1. Claims 1-4, 6-10 and 13-18 are pending in the application, claims 5, 11 and 12 have been cancelled.
2. Amendments to the specification and the claims, filed on April 11, 2006, have been entered in the above-identified application.

### ***WITHDRAWN REJECTIONS***

3. The 35 U.S.C. §103 rejection of claims 1-4, 6-10, 13 and 14 as over Ota et al. (US Patent No. 4,481,163) in view of Chubb et al. (US Patent No. 6,214,424), made of record in the office action mailed March 21, 2006, pages 2-3, paragraph #5 has been withdrawn due to Applicant's amendment in response filed April 11, 2006.

### ***REJECTIONS***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Specification***

5. The amendment filed April 11, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the new paragraphs add after page 5, line 4. The examiner is unable to find support in the original filed specification. If this new section is from one of the references incorporated by reference, Applicant is asked to supply copies of the references and point out where they have support for the new paragraphs added to the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

6. Claims 1-4, 6-10 and 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "parts by weight of thermoplastic resin" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. While the claim is a "thermoplastic product," the claim never recites that it contains a "thermoplastic resin" until claim 3.

***Claim Rejections - 35 USC § 102***

7. Claims 1, 4, 6, 13 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirata et al. (U.S. Patent No. 4,370,368).

Hirata discloses a molded thermoplastic (*col. 8, lines 60*) container (*title*) comprising an outer surface with an etc pattern (*col. 9, line 64 to col. 10, line 1*), which is deemed to be a matte finish, and a colorant present in the thermoplastic product ranging from about 0.01 to about 15 parts by weight of thermoplastic resin (*col. 9, lines 10-15*). The colorant is deemed to be a frost colorant and light-diffusing particles since it is made from barium sulfate (*col. 9, line 9*). The thermoplastic resin is polyethylene terephthalate (*col. 8, lines 49-50*). The particles are present in the thermoplastic product ranging from about 0.2 to about 5 parts by weight of thermoplastic resin and comprises any form of powders, fibers, whiskers, platelets, flakes, aggregated or mixtures of these (*col. 9, lines 10-15*).

The limitation “the etched pattern is microreplicated” is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113.

8. Claims 1-3, 6-10 13, 14 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Akao et al. (U.S. Patent No. 5,384,173).

Akao discloses a molded thermoplastic container (*title*) comprising an outer surface with an etc pattern, which is deemed to be a matte finish, and a colorant present in the thermoplastic product ranging from about 0.01 to about 15 parts by weight of thermoplastic resin (*col. 12, lines*

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65-66). The colorant is deemed to be a frost colorant and light-diffusing particles since it is made from barium sulfate (*col. 12, lines 50-51*). The thermoplastic resin is transparent (*col. 3, line 25*). The particles are present in the thermoplastic product ranging from about 0.2 to about 5 parts by weight of thermoplastic resin and comprises any form of powders, fibers, whiskers, platelets, flakes, aggregated or mixtures of these (*col. 12, lines 50-51*). The etched pattern has depressions ranging from about 0.1 to about 100 microns, more specifically about 0.5 to 10 microns (*col. 2, lines 49-51*). The ratio of depressions to lands in the surface area can range from about 1 to about 90 percent, more specifically about 50 to about 80 percent (*col.2, lines 47-49*). The light-diffusing particles are deemed to add diffused translucency and the etched pattern is deemed to add tactile texture to the product.

The limitation “the etched pattern is microreplicated” is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113.

### ***Claim Rejections - 35 USC § 103***

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akao et al. (U.S. Patent No. 5,384,173).

Akao is relied upon as described above.

Akao fails to disclose the average maximum particle size of about 0.1 to about 200 microns.

It is deemed a matter of optimization via routine experimentation of properties to make the particle size from about 0.1 to about 200 microns as recited in Applicant's claim 15 when making the product. See MPEP 2144.05.

***ANSWERS TO APPLICANT'S ARGUMENTS***

10. Applicant's arguments in the response filed April 11, 2006 regarding the previous rejections of record have been considered but are moot since the rejections have been withdrawn.

***Conclusion***

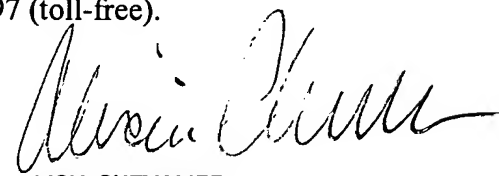
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac

3/30/07



**ALICIA CHEVALIER**  
**PRIMARY EXAMINER**

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### Continuation Sheet

*Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:*

Applicant's representative called the examiner of record to inquire about the notice of non-compliant, since it appeared to be incorrect. The examiner of record agreed that it was incorrect and agreed to withdraw it.

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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7/12/06



ALICIA CHEVALIER  
PRIMARY EXAMINER